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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/025,403

12/19/2001

Brian K. Doyle

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03/21/2003

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EXAMINER

TRAN LIEN, THUY

ART UNIT

PAPER NUMBER

1761

DATE MAILED: 03/21/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/025,403

Applicant(s)
Doyle et al.

Examiner
Lien Tran

Art Unit
1761



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on Dec. 2, 2002
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3, 5-8, 11, 12, 14-17, 19, 20, 22-27, 29-33, and 35-40 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3, 5-8, 11, 12, 14-17, 19, 20, 22-27, 29-33, and 35-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO 152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other: _____

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1. Claims 1-3, 5-8, 10-12, 14-17, 19-20, 22-27, 29-33 and 35-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bauer et al for the same reason set forth in paragraph 6 of the previous office action.
2. In the response filed Dec. 2, 2002, applicant argues the Bauer et al reference has no teaching whatsoever of dough made from potatoes or other such tubers and it would not have been obvious to select potato-based dough. The examiner respectfully disagrees with applicant. The gist of the Bauer et al teaching is a batter which gives food substrate a crisp texture, golden brown appearance and fresh fried taste. While Bauer et al do not specifically disclose potato-based dough, they do disclose the batter can be used on a variety of food substrates including non-cereal grain substrate. Bauer et al disclose the batter can be used on vegetable, fruit, meat etc. The use of the batter is not limited to only grain-based product. It would have been obvious to one skilled in the art to use the batter on any dough substrate when one wants to obtain a crisp texture, golden brown appearance and fresh fried taste. There is no indication in Bauer et al that the batter can not be used in dough made from potato. As disclosed in the instant specification, the food product with the coating thereon can be potato-based dough or cereal-grain dough. The selection of food substrates varies according to taste and would have been an obvious matter of preference. As shown by the prior art submitted by applicant and cited by the examiner, potato substrate can be coated with starch-based coating. Thus, there is no contraindication known in the art to coating potato product. Applicant argues the Bauer et al reference is pointedly limited to the use of cereal-based batter; this limitation pertains to the

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batter, not to the food substrates which can be coated. Applicant argues the particular nature of the potato/tuber dough has specific attributes not shown in the prior art. It is not question that dough made from potato will have different characteristics from dough made from other material. Each ingredient used to make a food product provides different texture, taste and flavor. However, the concept of using potato to make different dough product is known in the art; one would only need to open any cookbook and finds such teaching. There are potato pancakes, potato croquettes, potato biscuit, potato bread, potato chips ect.... It would have been obvious to one skilled in the art to choose a potato-based dough substrate when one wants the taste of potato product and the crispiness, golden brown color and fresh fried taste provided by the batter.

Applicant's arguments filed Dec. 2, 2002 have been fully considered but they are not persuasive.

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however,

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will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lien Tran whose telephone number is 703-308-1868. The examiner can normally be reached on Wed-Fri. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9310.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.

March 20, 2003

Lien Tran
Group 1762